

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sajem Restaurant, Inc. :

for Redetermination of a Deficiency or for Refund :
of Corporation Franchise Tax under Article 9-A :
of the Tax Law for the Fiscal Years Ended :
December 31, 1979 and December 31, 1980. :

In the Matter of the Petition :
of :
Sajem Restaurant, Inc. :

for Revision of a Determination or for Refund of :
Sales and Use Taxes under Articles 28 and 29 of :
the Tax Law for the Period December 1, 1979 :
through February 28, 1981. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
Martin Corwin :

for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Article 22 of the Tax :
Law and Chapter 46, Title T of the Administrative :
Code of the City of New York for the Years 1979 :
and 1980. :

In the Matter of the Petition :
of :
Theodore & Dorothy Corwin :

for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Article 22 of the Tax :
Law and Chapter 46, Title T of the Administrative :
Code of the City of New York for the Years 1979 :
and 1980. :

State of New York :

ss.:

County of Albany :

Page 2

Affidavit of Mailing

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 21st day of August, 1985, he served the within notice of Decision by certified mail upon Sajem Restaurant, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sajem Restaurant, Inc.
c/o Corwin
195 - 60B Peck Avenue
Fresh Meadow, NY 11365

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
21st day of August, 1985.

David Parchuck

James J. Gallagher
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

August 21, 1985

Sajem Restaurant, Inc.
c/o Corwin
195 - 60B Peck Avenue
Fresh Meadow, NY 11365

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Herbert R. Reimann
3000 Marcus Ave.
Lake Success, NY 11042
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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Sworn to before me this
21st day of August, 1985.

David Parchuck

James P. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

August 21, 1985

Sajem Restaurant, Inc.
c/o Corwin
195-60B Peck Avenue
Fresh Meadows, NY 11365

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

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Phone # (518) 457-2070

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STATE TAX COMMISSION

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Herbert R. Reimann
3000 Marcus Ave.
Lake Success, NY 11042
Taxing Bureau's Representative

STATE OF NEW YORK

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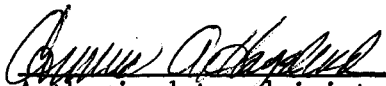
Martin Corwin
195-60 B Peck Ave.
Fresh Meadows, NY 11365

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
21st day of August, 1985.

David Parchuck


Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

August 21, 1985

Martin Corwin
195-60 B Peck Ave.
Fresh Meadows, NY 11365

Dear Mr. Corwin:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 1312 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

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Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Herbert R. Reimann
3000 Marcus Ave.
Lake Success, NY 11042
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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State of New York :

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County of Albany :

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Affidavit of Mailing

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 21st day of August, 1985, he served the within notice of Decision by certified mail upon Theodore & Dorothy Corwin, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Theodore & Dorothy Corwin
1755 Ocean Pkwy.
Brooklyn, NY 11223

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
21st day of August, 1985.

David Parchuck

Carrie McDonald

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sajem Restaurant, Inc. :

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of Corporation Franchise Tax under Article 9-A :
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Sajem Restaurant, Inc. :

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AFFIDAVIT OF MAILING

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Martin Corwin :

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Law and Chapter 46, Title T of the Administrative :
Code of the City of New York for the Years 1979 :
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In the Matter of the Petition :
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Theodore & Dorothy Corwin :

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David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 21st day of August, 1985, he served the within notice of Decision by certified mail upon Herbert R. Reimann, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Herbert R. Reimann
3000 Marcus Ave.
Lake Success, NY 11042

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
21st day of August, 1985.

David Parchuck

James A. Hegeland

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

August 21, 1985

Theodore & Dorothy Corwin
1755 Ocean Pkwy.
Brooklyn, NY 11223

Dear Mr. & Mrs. Corwin:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 1312 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

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NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Herbert R. Reimann
3000 Marcus Ave.
Lake Success, NY 11042
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSISON

In the Matter of the Petition

of

SAJEM RESTAURANT, INC.

for Redetermination of a Deficiency or for
Refund of Corporation Franchise Tax under
Article 9-A of the Tax Law for the Fiscal Years
Ended December 31, 1979 and December 31, 1980.

In the Matter of the Petition

of

SAJEM RESTAURANT, INC.

for Revision of a Determination or for Refund
of Sales and Use Taxes under Articles 28 and
29 of the Tax Law for the Period December 1,
1979 through February 28, 1981.

DECISION

In the Matter of the Petition

of

MARTIN CORWIN

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law and Chapter 46, Title T of the
Administrative Code of the City of New York
for the Years 1979 and 1980.

In the Matter of the Petition

of

THEODORE AND DOROTHY CORWIN

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law and Chapter 46, Title T of the
Administrative Code of the City of New York
for the Years 1979 and 1980.

Petitioner, Sajem Restaurant, Inc. c/o Corwin, 195-60B Peck Avenue, Fresh Meadows, New York 11365, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the fiscal years ended December 31, 1979 and December 31, 1980 (File No. 49095), and a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1979 through February 28, 1981 (File No. 44597).

Petitioner, Martin Corwin, 195-60B Peck Avenue, Fresh Meadows, New York 11365, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the years 1979 and 1980 (File No. 43292).

Petitioners, Theodore and Dorothy Corwin, 1755 Ocean Parkway, Brooklyn, New York 11223, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the years 1979 and 1980 (File No. 43240).

A consolidated hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 7, 1985 at 1:15 P.M. Petitioners appeared by Herbert R. Reimann, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Lawrence A. Newman, Esq. of counsel).

ISSUE

Whether the Audit Division properly determined petitioners' additional personal income, corporation franchise and sales and use taxes due.

FINDINGS OF FACT

1. On February 28, 1983, as the result of a field audit, the Audit Division issued two notices of deficiency pursuant to Article 9-A of the Tax Law against petitioner Sajem Restaurant, Inc. ("Sajem"). The first was in the amount of \$2,282.00 plus interest of \$874.00 for a total due of \$3,156.00 for the fiscal year ended December 31, 1979. The second was in the amount of \$2,120.00 plus interest of \$632.00 for a total due of \$2,752.00 for the fiscal year ended December 31, 1980.

2. On May 4, 1983, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Sajem in the amount of \$1,863.00 plus interest of \$580.05 for a total due of \$2,443.05 for the period December 1, 1979 through February 28, 1981.

3. On March 16, 1983, the Audit Division issued a Notice of Deficiency against petitioner Martin Corwin for personal income tax due in the amount of \$2,342.00 plus penalty of \$378.00 and interest of \$696.36 for a total due of \$3,416.36 for the years 1979 and 1980. On the same date, the Audit Division issued a Notice of Deficiency against petitioners Theodore and Dorothy Corwin for personal income tax due in the amount of \$2,609.00 plus penalty of \$130.00 and interest of \$739.77 for a total due of \$3,478.77 for the years 1979 and 1980.

4. Petitioners Martin Corwin and Theodore Corwin were the officers and stockholders of Sajem, a corporation which operated a coffee shop in New York City under the name of Coffee Cup East. The Audit Division commenced an audit of Martin Corwin's income tax returns for 1979 and 1980 using the source and application of funds audit method. The auditor analyzed Martin Corwin's checking accounts, savings accounts and federal tax returns. His analysis revealed a

cash availability shortage of \$14,038.00 for 1979 and \$8,228.00 for 1980. The auditor then commenced a similar audit of Theodore and Dorothy Corwin for the same years and found a cash availability shortage of \$13,469.00 for 1979 and \$12,747.00 for 1980.

5. The auditor also audited the books and records of Sajem and, except for a small discrepancy, found them to be in conformity with the corporate tax returns filed by Sajem. However, since there was no indication that either Martin Corwin or Theodore Corwin had income from a source other than Sajem, the auditor deemed the cash shortages of each officer to be constructive dividends from Sajem. As a result, the auditor adjusted Sajem's income by adding the combined shortages of each officer for each year for a total adjustment of \$27,507.00 for 1979 and \$20,975.00 for 1980 for corporation franchise tax purposes.

6. All of Sajem's income was derived from taxable sales; therefore, the additional income for corporation franchise tax purposes was deemed to be additional taxable sales which were applied to sales tax quarters falling within the years in issue. Sales tax was assessed only for those quarters which were still within the period of limitations for assessment. The resulting additional sales amounted to \$23,268.00 for said quarters.

7. At the hearing, evidence was submitted indicating that in 1979 Martin Corwin and his wife celebrated their 25th wedding anniversary at a surprise party at which time they received \$1,550.00 in cash gifts. This amount was not included as a source on audit. Martin Corwin also had two vacation club accounts which were funded by automatic deductions from deposits to his checking account. The amounts received from these clubs were \$1,500.00 and \$1,200.00, respectively, for 1979 and \$1,500.00 and \$1,100.00, respectively, for 1980.

These amounts were not included as sources for either year. Additionally, in 1980 Martin Corwin's wife had her salary checks deposited directly to her checking account by her employer. She would then transfer these funds by check to a second checking account which she preferred to use. The auditor included all of such transfer checks as sources except for two checks totalling \$1,200.00. At the hearing, cancelled checks were exhibited indicating that two such additional checks had been written to transfer funds. Thus the total additional sources of income demonstrated by Martin Corwin were \$4,250.00 for 1979 and \$3,800.00 for 1980.

8. With respect to petitioners Theodore and Dorothy Corwin, evidence was submitted indicating that federal and state income tax refunds received in 1979 and 1980 were not included as sources of income. Said refunds amounted to \$399.00 in 1979 and \$491.00 in 1980.

9. Petitioners objected to other portions of the audit; however, the only evidence offered in support consisted of unsworn statements by interested parties or family members. No sworn testimony was offered at the hearing to support any of petitioners' positions.

CONCLUSIONS OF LAW

A. That, as discussed in Finding of Fact "7", petitioner Martin Corwin has demonstrated that his sources of income, as determined on audit, should be increased by \$4,250.00 for 1979 and \$3,800.00 for 1980. Petitioners Theodore and Dorothy Corwin have demonstrated, as discussed in Finding of Fact "8", that their sources of income should be increased by \$399.00 for 1979 and \$491.00 in 1980. Appropriate adjustments are also to be made to the corporation franchise tax due and the sales tax due to conform therewith.

B. That the other objections to the audit raised by petitioners were not supported by sufficient evidence. Unsworn statements, absent any corroboration by testimony or documentation, can be given little weight and are inadequate to overcome petitioners' burden of proof.

C. That the petitions of Sajem Restaurant, Inc., Martin Corwin and Theodore and Dorothy Corwin are granted to the extent indicated in Conclusion of Law "A"; that the Audit Division is directed to modify the notices of deficiency issued February 28, 1983 and March 16, 1983 and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 4, 1983 accordingly; and that, except as so granted, the petitions are in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

AUG 21 1985


PRESIDENT


COMMISSIONER


COMMISSIONER